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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,962	10/24/2001	Matthew Heidner	1001.1479101	8725
28075	7590	04/11/2006		
CROMPTON, SEAGER & TUFTE, LLC 1221 NICOLLET AVENUE SUITE 800 MINNEAPOLIS, MN 55403-2420				
			EXAMINER THALER, MICHAEL H	
			ART UNIT 3731	PAPER NUMBER

DATE MAILED: 04/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/032,962	Applicant(s) HEIDNER, MATTHEW	
	Examiner Michael Thaler	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,7-18 and 23-28 is/are pending in the application.
- 4a) Of the above claim(s) 7,9,10,15,17,18 and 23-28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,8,11-14 and 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on Feb. 14, 2006 has been entered.

Claims 7, 9, 10, 15, 17 and 18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made without traverse in the responses filed March 17, 2004 and Dec. 9, 2004.

Newly submitted claims 23-28 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 23-28 are drawn to the combination of an elongate tubular member and a balloon. Claims 1-5, 7-18 are drawn to the subcombination of a balloon. These inventions are distinct because the combination as claimed does not require the particulars of the subcombination as claimed. For example, combination claim 23 does not require the particular feature in claim 1 that the void volume proximate the second end is greater than the void volume proximate the first

end of the balloon waist. The subcombination has separate utility. For example, it could be used with a solid support instead of a tubular member and the balloon could be inflated by piercing it with a needle wherein the balloon material is self-sealing.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 23-28 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claims 11-14 and 16 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 11 is confusing and inaccurate since, in the elected species of figure 5, the void volume per unit length increases toward but not to the distal end of the balloon waist as claimed. This is because the third series 56 of voids 50 is spaced from the distal end by a short length of balloon waist having no voids 50.

Claims 1-5, 8, 11-14 and 16 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Shoup et al. (5,591,129). Shoup

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et al. disclose balloon body 10 having an expandable region and a balloon waist (the portion of the balloon extending from reference numeral 19 to the right end of the balloon as seen in figure 12) including an annular wall having a first end (the right end), a second end (the left end), the balloon waist having a plurality of voids 26, 27 formed in the annular wall, wherein the plurality of voids are configured such that the void volume proximate the second end is greater than the void volume proximate the first end of the balloon waist. The portion of the balloon waist proximate the first end (the right end) is considered to have a length that include only one set of openings 26 or 27. The portion of the balloon waist proximate the second end (the left end) is considered to have the same length as the first length described above, but this same length includes two sets of openings 26 or 27 (since the left most set of openings is closer to the left end than the right most set of openings is to the right end). Since the portion of the balloon waist proximate the second end has twice as many openings as the portion of the balloon waist proximate the first end, the void volume proximate the second end is greater than the void volume proximate the first end. Alternatively, it would have been obvious that the void volume proximate the second end is greater than the void volume proximate the first end of the balloon

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waist for the reasons set forth above. As to claim 5, Shoup et al. disclose proximal waist 18, 30 which includes a void above the tapered portion of 30 best seen in figure 8. Also as to claim 5, the balloon waist will have a reduced profile over a substantial portion of the balloon waist subsequent to thermal reformation. In other words, if the balloon waist shown in figure 12 is subjected to thermal reformation, the melted balloon material would inherently flow into voids 26, 27 and reduce the profile of the waist. Note that the claims are drawn to a balloon waist with voids rather than a method of thermal reformation. As to the indefinite language in claim 11, lines 6-8, the void volume of Shoup et al. increases distally along the length of the balloon waist toward the distal end since the void volume is relatively small at the left side of a set of openings and then increases toward the distal end of the waist until it reaches a maximum at the center of the set of openings. As to claim 4, the voids 26, 27 cause the material volume per unit length to decrease in the distal direction for the same reason.

Applicant's arguments filed Feb. 14, 2006 have been fully considered but they are not persuasive. The allegation that orifices 26, 27 of Shoup et al. are centrally located between areas 19 and 29 is incorrect. Figure 12 shows the left most

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orifice as being closer to the left end (wherein the left end is just to the left of the distal end of the lead line for reference numeral 19) as compared to the distance between the rightmost orifice and the right end (wherein the right end is at the arrow for reference numeral 29).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (571)272-4704. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571)272-4963. The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.

mht
4/7/06



MICHAEL THALER
PRIMARY EXAMINER
ART UNIT 3731